IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4555 of 2006

Date of Decision: 17th September, 2007

Rajender Kumar

.... Petitioner

Versus

Sudhir Kumar and others.

... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND.

Present : Mr. Sandeep Punchhi, Advocate,
for the petitioner.

Mr. N.K. Joshi, Advocate,
for respondent No.1.

S.D. Anand, J.

The petitioner and respondent No.1 contested election to the office of Sarpanch Gram Panchayat of Village Kusar. Petitioner won the election.

Respondent No.1 – Sudhir Kumar challenged the validity of election on plea of corrupt practices. In the grounds of challenge, he also made a request for recount of votes in terms of the provisions of Section 176 (4)(B) of the Haryana Panchayati Raj Act (hereinafter referred to as the Act). In the course of the proceedings, respondent No.1 – Sudhir Kumar made the following statement on 16.11.2005:-

> "Stated that in the election petition u/s 176(4)(B) I want to get the recounting only. Apart from this I withdraw the remaining

grounds of election petition and do not want to proceed in election petition on any other ground. I want to proceed in election petition only on the ground of recounting."

Thereafter, the plea for recounting was declined by the learned Additional Civil Judge (Senior Division), Sirsa (hereinafter referred to as the Tribunal). Respondent No.1, thereupon, raised a plea for being allowed to adduce evidence in respect of the other grounds of challenge. The plea was resisted by the petitioner by averring that respondent No.1 was dis-entitled to adduce evidence in respect of the other grounds of challenge as he had waived those grounds vide his statement dated 16.11.2005.

The learned Tribunal negatived the objection raised by the petitioner and ordered that evidence in respect of the other grounds of challenge shall be recorded.

The petitioner is in revision against that order.

The learned counsel for the petitioner argued, at the very outset, that it was a pure and simple case of waiver on the part of the respondent in the matter of other grounds of challenge and he cannot heard to insist upon adjudication of the election petition on the other grounds, once the recount plea raised by him had not found favour with the Tribunal.

The plea was resisted by the learned counsel for the respondents by arguing that the principle of estoppel does not operate in this case inasmuch as there is not even an averment that the petitioner had done an act to its detriment on the basis of the statement made by respondent No.1 on 16.11.2005. Reliance, in support of the advocated plea, was placed upon a number of judicial pronouncements including in AIR 1965 Supreme Court 1812 (R.S. Maddanappa versus Chandramma and another),

AIR 1979 Supreme Court, 798 (Mahindra and Mahindra Ltd. Versus The Union of India and another), AIR 1975 Madhya Pradesh, 145 (Ramgulam Shri Baijnath Prasad versus The Collector, District Guna and others), AIR 1962 Supreme Court 1471 (Mrs. Hem Nolini Judah versus Mrs. Isolyne Sarojbashini Bose and others) and AIR 1993 Supreme Court 1766 (Rama Kant Pandey versus Union of India).

The plea raised on behalf of the petitioner deserves outright acceptance. In view of the conceded position that the respondent did make a categorical statement that he withdraws the remaining grounds of challenge and that he does not want to proceed in the election petition on any ground other than recounting, he cannot at all be heard to insist upon entitlement to adduce evidence in respect of the other grounds on which the election of the petitioner had been challenged. Even at the cost of repetition, it may be indicated that, in the course of the statement dated 16.11.2005, the respondent had made a precise statement on oath that he wanted to proceed in the election petition only on the plea of recounting and that he withdraws the remaining grounds on the basis whereof the election of the petitioner to the office of Sarpanch of Gram Panchayat of Village Kusar had been challenged. It was, thus, by all means a clear case in which the other grounds were given up by the respondents. It is not the plea that he had made that statement under any misconception or duress or undue influence. Once he had done so, he cannot be allowed to re-agitate the given up grounds all over again, after having lost the battle in the context of recounting. The principle of estoppel, in the strict sense, would not apply and, in the light thereof, the judicial pronouncements relied upon by the learned counsel for the respondents have no significance to the adjudication

of controversy before this Court.

In the light of foregoing discussion, the petition succeeds. The impugned order of the Tribunal indicating reception of evidence in the context of the other grounds of challenge shall stand set aside. The petitioner shall also be entitled to the cost of the cause in this Court which are quantified at Rs. 5,000/-.

September 17, 2007 (S.D. Anand)
vkd Judge

Note : Whether referred to reporter or not : Yes/No